

REMARKS

This is intended as a full and complete response to the Office Action dated July 20, 2004, having a shortened statutory period for response set to expire on October 20, 2004. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-29 are pending in the application. Claims 1-31 remain pending following entry of this response. Claims 15, 22 and 23 have been amended. New claims 30 and 31 have been added to recite aspects of the invention. Applicants submit that the amendments and new claims do not introduce new matter.

Claims 1-2, 4-7 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Knudson et al. (Knudson)*, U.S. Patent No. 6,016,141 in view of *Pallakoff*, U.S. Patent No. 6,269,343. Applicants respectfully traverse the rejection.

A proper *prima facie* non-obviousness rejection requires that the Examiner provide a motivation to combine the references. MPEP § 2143.01. Here, the Examiner provides no motivation to combine; rather, the Examiner merely states that the combination "would have been obvious to one of ordinary skill in the art at the time the invention was made..." A conclusory statement to this effect based on the cited references teaching "that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP § 2143.01. Therefore, a *prima facie* case of non-obviousness has not been established. Accordingly, Applicants respectfully submit that the rejection is improper and request that the rejection be withdrawn and the claims be allowed.

Further, a proper *prima facie* non-obviousness rejection requires that the cited references show each of the recited claim limitations. MPEP § 2143.03. In this case, the Examiner cites *Pallakoff* for a teaching of subscriber groups. In fact, *Pallakoff* does not disclose subscriber groups. The buyers in *Pallakoff* may be anyone interested in making an online purchase. A subscription is not required. In fact, a group is not required. A single buyer is sufficient. (Col. 2., lines 58-60.) Therefore, a *prima facie* case of non-obviousness has not been established. Accordingly, Applicants respectfully

submit that the rejection is improper and request that the rejection be withdrawn and the claims be allowed.

Further, Applicants respectfully submit that the Examiner misinterprets *Pallakoff*. Specifically, the Examiner cites Figures 3 and 6, col. 4, lines 20-33 and col. 7, line 6 thru col., line 10 of *Pallakoff* for teaching "determining a first price for a purchase order if goods are purchased by a threshold number of buyers in a buyer group and determining a second price, higher than the first, if the program has not been purchased by the threshold number of members in a buying group for the benefit of providing discounts to members of a group based upon the quantity purchased". (Examiner's Action, Paper 2, page 3.) In fact, the cited passages make clear that *Pallakoff* does not disclose a pricing model that is contingent on the number of members in a subscriber group who purchase a given program. Rather, the *Pallakoff* teaches a model that is based on aggregate sales of individuals. (See, e.g., Col. 2, lines 32-33 and col. 4, lines 52-57.) That is, the more units sold, the lower the price, regardless of how many buyers are involved in the sale. (Col. 1, lines 59-64.) This is why *Pallakoff* teaches that only one seller and one buyer are necessary. (Col. 2, lines 58-60.) Therefore, *Pallakoff* does not teach, show or suggest receiving a purchase order for a program from a subscriber belonging to a subscriber group; determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group; and determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group. Accordingly, Applicants respectfully submit that the rejection is improper and request that the rejection be withdrawn and the claims be allowed.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Knudson* in view of *Pallakoff*, as applied to claim 1, further in view of *Jeffers et al.* (*Jeffers*), U.S. Patent No. 5,036, 537. For the reasons given above with respect to *Knudson* in view of *Pallakoff* Applicants submit that this rejection is overcome. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Knudson*, in view of *Pallakoff*, as applied to claim 1, further in view of *LaRocca et al.* (*LaRocca*), U.S. Patent No. 6,314,572. For the reasons given above with respect to

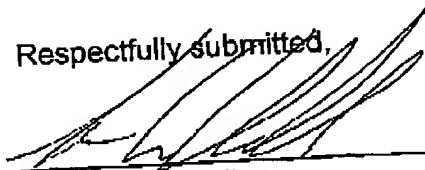
Knudson in view of *Pallakoff* Applicants submit that this rejection is overcome. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 8, 10, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Knudson*, in view of *Pallakoff*, as applied to claim 1, further in view of *Cooper et al. (Cooper)*, U.S. Patent No. 6,754,904. For the reasons given above with respect to *Knudson* in view of *Pallakoff* Applicants submit that this rejection is overcome. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 15-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Knudson*, in view of *Callals et al. (Callals)*, U.S. Patent No. 3,790,700. Applicants identified a typographical error in claim 15 and have amended claim 15 to be consistent with a pricing model similar to that of claim 1. As a result, the Examiner's rejection is moot. Applicants respectfully request that the rejection be withdrawn and the claims be allowed.

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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